

United States v. Payton Gendron

22-CR-109-LJV

DEFENDANT'S EXHIBIT A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

22-CR-109 (LJV)

PAYTON GENDRON,

Defendant.

DEFENDANT’S PROPOSED SCHEDULING ORDER

Discovery Motions

February 16, 2024: The United States shall make available to the defendant all non-expert Fed. R. Crim. P. 16 discovery and all material for which disclosure is mandated by *Brady v. Maryland*, 373 U.S. 83 (1963).¹

May 2, 2024: Defense discovery motions:

- Motion for Informational Outline regarding aggravating factors;
- Motion for Bill of Particulars;
- Discovery relating to statutory and non-statutory aggravating factors contained in Notice of Intent to Seek the Death Penalty;
- Discovery relating to potential mitigating factors, e.g., evidence regarding conditions of confinement relevant to the absence of future danger;
- Case-specific discovery.²

June 3, 2024 Government responses to defense discovery motions.

¹ This deadline is subject to the parties’ continuing discovery obligations.

² This pleading refers to specific items of discovery identified by the defense as missing or incomplete from previous disclosures. The process of reviewing discovery that has been provided and identifying and requesting additional material from the government has been ongoing throughout the pendency of this case and the parties have worked together to resolve any such matters without court involvement. Accordingly, the defense will file specific motions to compel discovery only if necessary and will reach out to the government in advance in an attempt to resolve these issues short of litigation.

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| July 1, 2024 | Defense replies to government responses to discovery motions. |
| July 17, 2024 | Oral argument/evidentiary hearings on motions and requests. |
| August 19, 2024 | All ordered disclosures due (informational outline regarding aggravating evidence, bill of particulars, etc.; all disclosures by United States under Fed. R. Evid. 404(b)(3), Fed. R. Evid. 609, and Fed. R. Evid. 807(b)). |

Specific, Non-Discovery Dependent Pleadings

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| June 3, 2024 | Motion to Dismiss 18 U.S.C. § 924 (c) Counts; challenges to the constitutionality of the Federal Death Penalty Act; claims that the government is categorically precluded from seeking the death penalty due to the defendant's age. |
| July 3, 2024 | Government responses to defense motions challenging pleadings and evidence. |
| July 31, 2024 | Defense replies to government responses to defense motions challenging pleadings and evidence. |
| August 28, 2024 | Oral argument/evidentiary hearing on defense motions challenging pleadings and evidence. |

14 days after rulings on previously filed defense motions:

Parties to confer and file joint proposed scheduling order covering litigation of discovery-dependent defense motions challenging pleadings and evidence (including motions challenging 404(b), validity of aggravating factors, motions to suppress, motions to enforce constitutional limits on victim impact evidence, motions to limit video/demonstrative evidence), to be followed by litigation related to trial procedures, such as Rule 12.2, venue, and jury selection.

United States v. Payton Gendron

22-CR-109-LJV

DEFENDANT'S EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

22-CR-109-V

PAYTON GENDRON,

Defendant.

GOVERNMENT’S PROPOSED SCHEDULING ORDER

- Feb. 16, 2024: Completion of non-expert Fed. R. Crim. P. 16 discovery for all parties; the United States shall make available to the defendant, by the time required by the applicable law, all material for which disclosure is mandated by *Brady v. Maryland*, 373 U.S. 83 (1963).¹
- March 1, 2024: Defense discovery motions
- March 15, 2024: Responses to defense discovery motions
- April 15, 2024: 1) Constitutional motions relating to capital punishment, including, but not limited to, challenges to the Federal Death Penalty Act, *per se* challenges to the death penalty, any claim that the government is categorically precluded from seeking the death penalty due to the age and/or mental health of the defendant, and challenges to Special Findings in the Indictment
- 2) Motion(s) to Dismiss/Strike the Special Findings in the Indictment and/or Notice of Intent to Seek the Death Penalty, including motions attacking the sufficiency of notice and/or validity of aggravating factors
- 3) Challenges to Death Qualification
- 4) Defense to provide reciprocal discovery pursuant to Fed. R. Crim. P. 16(b)(1)
- May 24, 2024: Government responses to capital motions

¹ This deadline is subject to the parties’ continuing discovery obligations.

- June 10, 2024: Replies re: capital motions
- June 17-21, 2024: Hearing re: capital motions, if necessary
- July 8, 2024: 1) Defense motions challenging the constitutionality of substantive offenses, including hate crimes statutes, charged in the Indictment
- 2) Pretrial motions, including but not limited to:
- Bill of Particulars
 - Venue
 - Defects in Instituting Prosecution
 - Selective Prosecution
 - Challenges to Grand Jury
 - Motions to Suppress
 - Challenges to Victim Impact Evidence
- July 15, 2024: The parties are directed to confer on the matter of jury selection procedures and to submit by this date a joint proposal regarding any areas of common agreement and separate proposals regarding any areas in dispute.
- Aug. 7, 2024: 1) Responses to pretrial motions
- 2) Responses to proposed jury selection procedures in dispute
- Aug. 14, 2024: Replies re: pretrial motions and proposed jury selection procedures
- Aug. 26-28, 2024: Hearings on pretrial motions and jury selection procedures, if necessary²
- Oct. 14, 2024: 1) Defense notice of intent to introduce expert evidence on a mental condition bearing on the issue of guilt or punishment pursuant to Fed. R. Crim. P. 12.2(b)(1) and (2)³
- Defendant's notice shall include the name and professional qualifications of any mental health professional who will testify as an expert and a brief, general summary of the topics to be addressed sufficient to permit the government to determine the area in which its expert must be versed.

² The Court will subsequently issue an order that will govern jury selection, including, but not limited, to dates and methods for prospective jurors to complete questionnaires, the parties to review questionnaires and propose strikes, in-court *voir dire*, and execution of peremptory strikes.

³ Unless either party subsequently requests alternative procedures, maintenance and disclosure of all results and reports of mental health examinations conducted pursuant to Fed. R. Crim. P. 12.2 shall be governed by Fed. R. Crim. P. 12.2(c).

- If defendant provides such notice, defendant shall be examined by a corresponding mental health professional or professionals selected by the government for purposes of rebuttal pursuant to Fed. R. Crim. P. 12.2(c)(1).

2) Government and defense disclosures of guilt-phase non-mental health expert summaries pursuant to Fed. R. Crim. P. 16(a)(1)(G) and (b)(1)(C)

3) Deadline for defendant to raise claims under *Atkins v. Virginia*, 536 U.S. 304 (2002). If notice is provided, a separate litigation schedule will be developed.

4) Deadline for defendant to raise issues of competency. If no motion is filed, the defense shall file an *ex parte* declaration under seal explaining why. If the defendant files a motion, a separate litigation schedule will be developed.

Nov. 4, 2024: 1) Disclosure of expert reports for experts identified in response to the parties' October 14, 2024, disclosures of guilt-phase non-mental health expert summaries

2) Challenges to any October 14, 2024, guilt-phase, non-mental health expert disclosures

Nov. 18, 2024: Responses to challenges to guilt phase non-mental health experts

Nov. 22, 2024: Disclosure of penalty phase non-mental health expert reports pursuant to Fed. R. Crim. P. 16(a)(1)(G) and (b)(1)(C)

Dec. 6, 2024: 1) Disclosure, if any, of expert reports for experts identified in response to the parties' November 22, 2024, disclosure of penalty phase non-mental health expert reports

2) Challenges to November 22, 2024, expert disclosures, if any

Dec. 18, 2024: The parties must confer on the matter of a jury questionnaire and submit by this date a joint proposed questionnaire, if possible, as well as separate proposals regarding any areas in dispute.

Dec. 20, 2024: Responses to challenges to penalty phase non-mental health experts

Jan. 13-15, 2025: Hearings re: jury questionnaire and challenges to experts, if necessary

- Feb. 10-14, 2025: Completion of jury questionnaires⁴
- Feb. 21, 2025: 1) The parties are directed to confer on the matter of jury instructions and verdict forms for all phases of the trial and to submit by this date a joint proposal regarding any areas of common agreement and separate proposals regarding any areas in dispute.
- 2) Motions in limine regarding both the guilt and sentencing phases of trial
- 3) Government guilt- and penalty-phase witness and exhibit lists
- March 7, 2025: 1) Responses to jury instruction proposals in dispute
- 2) Responses to motions in limine
- 3) Defense guilt-phase witness and exhibit list
- March 14, 2025: Defense penalty-phase witness list and list of proposed mitigating factors
- March 17, 2025: 1) Replies re: jury instruction proposals in dispute
- 2) Replies re: motions in limine
- March 19, 2025: Parties to confer and provide to the Court by this date 1) a list of agreed-upon motions to strike prospective jurors based on questionnaire responses; and 2) lists of non-agreed upon motions to strike prospective jurors based on questionnaire responses.
- March 24-28, 2025: 1) Hearing, if necessary, on jury instructions and verdict form, motions in limine, and any disputes regarding witness lists
- 2) Hearing, if necessary, on challenges to prospective jurors based on questionnaire responses
- April 14, 2025: Commence *voir dire*; trial to begin immediately after the conclusion of the jury selection process

⁴ Subject to negotiations of the parties and litigation related to jury selection procedures, it is generally expected that the Court will summon large groups to the United States Courthouse or another agreed-upon location to complete the jury questionnaires. Groups will be summoned in the morning and afternoon each day. The jury administrator will make completed questionnaires available to the parties on a rolling basis as soon as possible after each group completes the questionnaires.

